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Drafting of a State Ordinance for the regulation of Financial Services – Codes of Practice for Investment Business



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What are the 'Codes of Practice'?

- Issued by the CBA to registered persons under the State Ordinance
- Purpose is to establish sound principles for the conduct of investment business in accordance with accepted international practice
- Investment business can be defined as dealing, managing, advising, arranging and safeguarding of investments
- Who will it apply to? -Stock brokers, Dealers, Investment managers, financial advisers (including Life and Pension advisors), custodian service providers, arrangers of investments (those who act as intermediaries to buy/sell investments)
- Other financial services activities – Operating Stock Exchange activities & Fund Services Business will have separate Codes





Seven Core Principles

- A registered person must conduct its business with the highest integrity
- A registered person must have the highest regard for the interests of its client
- A registered person must organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems

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- A registered person must be transparent in its business arrangements
- A registered person must maintain and be able to demonstrate the existence of both adequate financial resources and adequate insurance
- A registered person must deal with the CBA and other authorities in Aruba in an open and co-operative manner
- A registered person must not make statements that are misleading, false or deceptive



The Codes should be read by registered persons in accordance with the State Ordinance, any conditions that may have been placed on the registration and the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism.

Failure to adhere to the Codes represents grounds for the CBA to take enforcement action such as the issue of directions including instructing the registered person to do or not do things, remove persons or cease operations. In appropriate circumstances such a direction may be made public.

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Core Principle 1

'A registered person must conduct its business with the highest integrity'

Must not act or refrain from acting or contract or any other have any other arrangement so as to avoid any regulatory responsibility it may have under the Codes

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Core Principle 2

'A registered person must have the highest regard for the interests of its clients'

A registered person must act with skill, care and diligence to fulfil the responsibilities that it has undertaken

- Knowledge of Client – obtain, document and maintain information pertaining to the service or product being given
- Suitability – document of facts, disclosures, reasons and of advice given
- Conflicts of Interest – procedures to ensure avoidance, declining to act etc.
- Switching & Churning – written documental evidence of reasons
- Front Running – must not deal in the investments themselves
- Customer Order Priority – Deal in order of priority
- Aggregation – rules regarding the amalgamation and bulk dealing of customer combined orders
- Fair & Timely Allocation and Execution rules

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Core Principle 3

‘A registered person must organise and control its affairs effectively for the proper performance of its business activities, and be able to demonstrate the existence of adequate risk management systems’

- Corporate Governance – ‘span of control’, individual responsibilities and accountabilities, separation of critical functions, monitoring by senior management/Board, ‘4 & 6 eyes’ rules, Risk Assessment, management reporting
- Internal Systems & Controls – meeting the standards and requirements of the regulatory framework, complaints handling system, policies & procedures, supervision of employees, handling client asset rules, internal review of systems and control requirements

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- Continued Professional Development – requirement for staff to ensure that they keep up to date with information / skills relevant to their role
- Integrity & Competence – Staff fit and competence requirements, qualifications, vetting procedures etc.
- Compliance Officer, Money Laundering Reporting Officer and Money Laundering Compliance Officer – requirement to appoint/designate appropriate person(s) to fulfil these roles - Can be ONE person
- Complaints – have systems and procedures in place
- Record keeping requirements



Core Principle 4

'A registered person must be transparent in its business arrangements'

- Stationery and advertising material
- Fees and charges disclosure requirements (no surprises policy)
- Communicate information in a fair and non misleading way (plain language)
- Advising if telephone conversations are recorded
- Restricted products disclosure

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Core Principle 5

'A registered person must maintain, and be able to demonstrate the existence of, both adequate financial resources and adequate insurance'

- Requirement to calculate daily liquidity position (ANLA) and minimum requirements
- Minimum Capital requirements
- Minimum Net Assets requirements (cash)
- Requirement to have Professional Indemnity Insurance



Core Principle 6

'A registered person must deal with the CBA and other authorities in Aruba in an open and co-operative manner'

- Extensive Notification rules – registered name change, change of address, winding up intentions, new business intentions that may effect the firms financial standing, reasons for departure of principal persons and key persons, convictions of key staff, disciplinary proceedings by any other supervisory body, revocation of professional body membership, litigation proceedings etc.



Core Principle 7

'A registered person must not make statements that are misleading, false or deceptive'

- Advertising rules – requirement to advise that the firm is registered under the Law, constraints on the use of certain words (Guaranteed, Assured, Protected etc.).



Transitional Provisions

Time will be allowed to firms to get into compliance with the Codes

- Corporate Governance – Span of Control requirements
- Internal Systems & Controls (written policies and procedures)
- Competence – Staff qualifications
- Appointment of Compliance Officer, MLRO and MLCO
- Change of Stationery
- Adequate financial resources and PI Insurance



QUESTIONS?

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